

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 5, 2007

CITIFINANCIAL, INC. v. BRENDA WILLIAMS

**Appeal from the Circuit Court for White County
No. CC 1668 John Turnbull, Judge**

No. M2006-00712-COA-R3-CV - Filed on July 5, 2007

Former property owner whose rights were extinguished in foreclosure proceedings, appeals the trial court's decision in this detainer action to restore possession of the real property to the plaintiff bank which acquired the property at the foreclosure sale. Finding the appellant failed to provide any record upon which this court could conclude the lower court erred, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Brenda Williams, Pro Se.

K. David Waddell and Christopher J. Oliver, Nashville, Tennessee, for the appellee, Citifinancial, Inc.

MEMORANDUM OPINION¹

Plaintiff, Brenda Gayle Williams, purchased 11.5 acres of residential property on Golden Mountain Road in Sparta, White County, Tennessee in 1990. The improvements on the property included a permanent residence of approximately 1,150 square feet, two mobile homes, and a barn. Ms. Williams and her son, Samuel Sims, lived in the house on that property and rented out the mobile homes.

¹Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

On June 17, 2003, Ms. Williams borrowed a substantial amount of money from Citifinancial, Inc. The loan from Citifinancial was secured with a Deed of Trust on the White County property for the principal amount of \$77,460.66. Approximately two years later, on May 5, 2005, Citifinancial notified Ms. Williams that her payments on the loan were past due. The notice informed Ms. Williams that Citifinancial sought payment of the past due amounts and payments of costs associated with the legal fees and expenses incurred to collect from Mr. Williams. The notice also informed Ms. Williams that failure to make the payments could result in the acceleration of the entire principal and interest due without further notice. When Ms. Williams failed to cure the default on the loan, Citifinancial initiated foreclosure proceedings, following which Ms. Williams' White County property was sold at a foreclosure sale to Citifinancial as the highest bidder. Thereafter, a Substitute Trustee Deed was recorded conveying the property to Citifinancial.

Citifinancial then notified Ms. Williams that it had purchased the property at the foreclosure sale and provided her five days to vacate the property, with the admonition that if she failed to do so, it would file a detainer warrant in General Sessions Court to obtain possession of the property. When she failed to vacate the property, Citifinancial filed and Ms. Williams was served with a detainer warrant. Ms. Williams appeared at the first hearing in General Sessions Court at which time she requested and was granted a continuance to hire an attorney. She appeared at the second hearing without counsel and proceeded pro se. Following the hearing in General Sessions, the court ruled in favor of Citifinancial and issued a Writ of Possession of the White County property to restore possession of the property to Citifinancial.

Ms. Williams appealed the decision of the General Sessions Court to the Circuit Court. Following a hearing in which testimony was presented, the Circuit Court, by Order entered March 1, 2006, affirmed the decision of the General Sessions court. This appeal followed. On appeal to this court, Ms. Williams challenges the propriety of the decisions of the Circuit Court and General Sessions Court, contending the foreclosure was unlawful.

ANALYSIS

Although Ms. Williams presents a conscientious argument in her brief, the record presented to this court provides very little relevant material for us to review.² Specifically, the record only contains a Certificate of Appellate Record, the Detainer Warrant, a Uniform Civil Affidavit of Indigency, a Notice of Appeal from the General Sessions Court to Circuit Court, an Order Allowing Filing a Pauper's Oath, the Judgment of the Circuit Court, and the Notice of Appeal to this Court. Moreover, the record does not contain a transcript of the evidence presented to the trial judge, which is an essential component of an appellant's case if the evidence, or lack thereof, presented to the trial court is relevant to the issues raised. Furthermore, the only exhibit in the record is the Substitute Trustee's Deed provided by Citifinancial, which only serves to support the position of Citifinancial.

²The brief of a party is of little consequence on appeal if the brief does not cite to and/or is not supported by a transcript of the evidence – if the evidence is at issue – or relevant parts of the record of the trial court upon which the issues on appeal are based.

When a party such as Ms. Williams seeks appellate review, it is the duty of the appealing party to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal. *State v. Ballard*, 855 S.W.2d 557 (Tenn. 1993) (citing *State v. Bunch*, 646 S.W.2d 158, 160 (Tenn. 1983)). If the record does not contain a transcript of the evidence relevant to the issues presented for our review, or portions of the record upon which the party relies to present an issue on appeal, we are precluded from considering the issue. *State v. Roberts*, 755 S.W.2d 833, 836 (Tenn. Ct. App.1988).

Ms. Williams has failed to provide this Court with a record that sets forth any basis for us to conclude that her challenges to the decisions of the trial court are meritorious. Absent relevant material in the record, we cannot consider the merits of an issue. *See* T.R.A.P. 24(b); *see also State v. Ballard*, 855 S.W.2d 557. Accordingly, in the absence of a record to support any of her issues on appeal, we affirm the decision of the Circuit Court.

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against Brenda Gayle Williams.

FRANK G. CLEMENT, JR., JUDGE